

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

Richard R. Susainathan)

Las Vegas, Nevada)

File Number: EB-07-LA-363

NAL/Acct. No.: 200832900001

FRN: 0005410709

FORFEITURE ORDER

Adopted: November 19, 2008**Released: November 21, 2008**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of twelve thousand dollars (\$12,000) to Richard Susainathan (“Susainathan”) for willful and repeated violation of Sections 1.903(a) and 1.947(a) of the Commission's Rules (“Rules”).¹ On December 18, 2007, the Enforcement Bureau’s Los Angeles Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$12,000 to Susainathan for operating fixed base transmitters from locations not authorized by the licenses of stations WPXC618, WPIQ777 and WPYM965, in Clark County, Nevada. In this *Order*, we consider Susainathan’s arguments that he is not personally liable for the violations, that he did not intend to violate the rules, that the complaint against his operation was the result of a personal controversy, and that there was no potential for interference from the unauthorized operation of one of the three stations.

II. BACKGROUND

2. S M Leasing and Rental, Ltd, is the licensee of stations WPXC618, WPIQ777 and WPYM965.² Station WPIQ777 is licensed to operate on a fixed base frequency of 937.9625 MHz, from Sunrise Mountain, Nevada, with coordinates of 36° 10’ 45.3” north latitude, 114° 59’ 51.3” west longitude. Station WPYM965 is licensed to operate on a fixed base frequency of 937.225 MHz, from Mesquite, Nevada with coordinates of 36° 46’ 18” north latitude, 114° 06’ 06” west longitude. Station WPXC618 is licensed to operate on a fixed base frequency of 936.9125 MHz, from Sunrise Mountain, Nevada, with coordinates of 36° 10’ 45.3” north latitude, 114° 59’ 51.3” west longitude. Station WPXC618 is also licensed to operate on its base frequency from Glendale, Nevada, with coordinates 36° 41’ 02” north

¹ 47 C.F.R. §§ 1.903(a), 1.947(a).

² Currently pending before a state court in Nevada, and the Commission’s Wireless Telecommunications Bureau (“WTB”), is the issue of who controls S.M. Leasing and Rental, Ltd. *See, e.g., In the Matter of Thomas K. Kurian*, 22 FCC Rcd 7318, 7320 (WTB 2007). Both Susainathan and Pappammal Kurian claim control of the licensee. Neither the issuance of the Notice of Apparent Liability nor the issuance of this *Order* should be considered to prejudge the outcome of that dispute and should the court and WTB determine that Susainathan does not hold control of the licensee, we may revisit our investigation to determine what, if any, additional violations Susainathan may be liable for.

latitude, 114° 30' 58" west longitude.

3. On November 27, 2007, an agent from the Enforcement Bureau's Los Angeles Office using direction finding techniques, located fixed, continuous, unmodulated, transmissions on the three fixed base frequencies, listed above, associated with stations WPXC618, WPIQ777 and WPYM965. The Los Angeles agent determined that the transmissions were originating from Susainathan's place of business at 3399 W. Oquendo Rd., Las Vegas, Nevada, with coordinates of 36° 04' 51" north latitude, 115° 11' 03" west longitude.

4. On November 28, 2007, the Los Angeles agent, again using direction finding techniques, located fixed, continuous, unmodulated, transmissions on the three fixed base frequencies associated with stations WPXC618, WPIQ777 and WPYM965. The agent determined that the transmissions continued to originate from Susainathan's place of business at 3399 W. Oquendo Road, Las Vegas, Nevada.

5. After locating the signals on November 28, 2007, the Los Angeles agent met with Susainathan and inspected the transmitters Susainathan was operating, which were configured for continuous operation and connected to a rooftop antenna. Susainathan stated that the transmitters were undergoing several weeks of testing prior to being installed at their authorized operational locations. At the time of the inspection, Susainathan had copies of the licenses for the three stations which indicated the licensed base station locations for each station. The Los Angeles agent warned Susainathan that none of the licenses authorized fixed base transmissions from the 3399 W. Oquendo Road, Las Vegas, Nevada location.

6. On December 18, 2007, the Los Angeles Office issued a *NAL* in the amount of \$12,000 to Susainathan.³ In the *NAL*, the Los Angeles Office found that Susainathan apparently willfully and repeatedly violated Sections 1.903(a) and 1.947(a) of the Rules by operating fixed base transmitters from locations not authorized by the licenses of stations WPXC618, WPIQ777 and WPYM965, in Clark County Nevada. Susainathan filed a response ("*Response*") to the *NAL* on January 2, 2008. In his *Response*, Susainathan argues that he is not personally liable for the violations, that he did not intend to violate the rules to gain commercial advantage, that the complaint against his operation was the result of a personal controversy, and that there was no potential for interference from the unauthorized operation of one of the three stations.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁶ In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900001 (Enf. Bur., Western Region, Los Angeles Office, released December 18, 2007).

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

8. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission.⁸ Section 1.947(a) of the Rules requires that all major modifications as defined in Section 1.929 of the Rules, require prior Commission approval.⁹ For Private Land Mobile Radio Services stations, Section 1.929(c)(4)(v) defines a major change as, “[c]hange in the authorized location or number of base stations, fixed, control, except for deletions of one or more such stations....”¹⁰

9. On November 27, 2007, and November 28, 2007, a Los Angeles agent observed Susainathan operating on the fixed base frequencies for stations WPXC618, WPIQ777 and WPYM965 at 3399 W. Oquendo Road, Las Vegas, Nevada. This location is more than twelve miles from the licensed locations for stations WPXC618¹¹ and WPIQ777, and more than 76 miles from the licensed location for station WPYM965. At the time of the inspection on November 28, 2007, Susainathan was aware that he was not operating from the licensed locations for the stations as he indicated to the Los Angeles agent that he was testing the transmitters prior to installing them at their licensed location.

10. In his *Response*, Susainathan does not dispute that the stations were operated at locations not authorized by their licenses. Instead, he argues that he is not the licensee of the stations and therefore cannot be held personally liable for the violations. He asserts that S M Leasing and Rental, Ltd. (“S M Leasing”), which he states that he controls, is the licensee and that the *NAL* against him should be cancelled. We disagree. As the Los Angeles Office noted in the *NAL*, the question of who controls S M Leasing is currently pending before a state court in Nevada.¹² Consequently, it is not clear who controls the licensee. What is clear is that Susainathan was responsible for the operation of the stations at unauthorized locations. Section 1.903(a) requires the stations be operated in accordance with the rules and with a valid authorization. While Susainathan states that he cannot be held liable for this violation, he does not explain why, given that he does not dispute that he was responsible for the operation of the stations at the unauthorized location. If the Los Angeles Office had found S M Leasing apparently liable for the violation, it is unlikely that the violation would have stopped, as the control of S M Leasing remains in doubt. In finding Susainathan apparently liable, the Los Angeles Office correctly determined that such an action would ensure an end to the violation, as the operation of the stations at the unauthorized location ceased after the *NAL* was issued to Susainathan. Given the unique circumstances presented, including the state court dispute regarding the control of the licensee, and Susainathan’s admission to the Los Angeles agent that he was responsible for the operation of the stations at the unauthorized location, we find no error in the Los Angeles Office’s decision to issue the *NAL* to Susainathan.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 C.F.R. § 1.903(a).

⁹ 47 C.F.R. § 1.947(a); 47 C.F.R. § 1.929.

¹⁰ 47 C.F.R. § 1.929(c)(4)(v).

¹¹ Susainathan’s location was also more than 55 miles from station WPXC618’s other authorized location in Glendale, Nevada.

¹² *NAL* at para 2, n.3.

11. Susainathan also argues that there he did not intend to violate the rules for commercial advantage. Section 312(f)(1) of the Act, which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..."¹³ Susainathan does not dispute that the stations were operated at locations not authorized by their licenses, and he does not dispute that he indicated to the Los Angeles agent that he was responsible for that operation.¹⁴ Consequently, we find that Susainathan willfully violated Section 1.903(a) of the Rules, regardless of whether he had any specific intent to violate that Rule.

12. Susainathan further argues that the complaint which initiated the investigation was not concerning interference but was the result of a personal controversy and consequently the forfeiture should be reduced or cancelled. We find no merit in this argument. The Commission has broad discretion to initiate an investigation with or without a complaint and has a responsibility to investigate where there is reason to believe a rule violation is taking place.¹⁵

13. Susainathan also asserts that the forfeiture amount should be reduced because there was no potential for station WPIQ777 to cause any interference, as there were no other licensees operating on 937.9625 MHz within 70 miles of the site of the unauthorized operation. We disagree. It is well established that the absence of public harm is not considered a mitigating factor of a rule violation.¹⁶

14. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Susainathan willfully and repeatedly violated Sections 1.903(a) and 1.947(a) of the Rules. Considering the entire record and the factors listed above, we find that no reduction of the proposed \$12,000 forfeiture is warranted.

IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Richard Susainathan, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$12,000 for willfully and repeatedly violating Sections 1.903(a) and 1.947(a) of the Rules.¹⁷

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ Although Susainathan states that the stations needed to be tested "for a period of time before entrusting them to their authorized locations," he acknowledges that the testing was done incorrectly, as the "transmitters should have been operated into a non-radiating dummy load."

¹⁵ See *James A. Kay*, 13 FCC Rcd 16369 (1998). See also 47 U.S.C. § 403.

¹⁶ See *Pacific Western Broadcasters, Inc.*, 50 FCC 2d 819 (1975) (rejecting a broadcaster's claim that the forfeiture should be downwardly adjusted because its operations at excessive power levels did not cause public harm or complaint, because the Commission not only is concerned with actual interference, but is concerned with the potential for interference). See also, *Auburn Broadcasters, Inc.*, 41 FCC 2d 462 (1973); *The McLendon Corp.*, 18 FCC 2d 224 (1969).

¹⁷ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a), 1.947(a).

Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Richard R. Susainathan shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Richard R. Susainathan, at his address of record, and Dennis C. Brown, his counsel of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

¹⁸ 47 U.S.C. § 504(a).